

09:44AM

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)
) Case No. 1:13-CR-00151
) (RJA) (JJM)
Plaintiff,)
)
vs.) August 8th, 2019
)
RYAN C. LANDER,)
)
Defendant.)

**TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE RICHARD J. ARCARA
SENIOR UNITED STATES DISTRICT JUDGE**

APPEARANCES:

For the Plaintiff: JAMES P. KENNEDY, JR.
UNITED STATES ATTORNEY
BY: MICHAEL DIGIACOMO, ESQ.
ASSISTANT UNITED STATES ATTORNEY
138 Delaware Avenue
Buffalo, NY 14202

For the Defendant: LOSI & GANGI
BY: PATRICK J. BROWN, ESQ.
147 Linwood Avenue
Buffalo, NY 14209

Probation Officer: LINDSAY MACALUSO

Court Reporter: MEGAN E. PELKA, RPR
Robert H. Jackson Courthouse
2 Niagara Square
Buffalo, NY 14202

09:44AM 1 THE CLERK: Criminal action 2013-151A. United States
09:44AM 2 v. Ryan C. Lander.

09:44AM 3 THE COURT: Have a seat Mr. Brown, Mr. DiGiacomo. Go
09:44AM 4 ahead.

09:44AM 5 THE CLERK: Sentencing.

09:44AM 6 MR. BROWN: Thank you, Judge.

09:45AM 7 THE CLERK: Counsel, please state your name and the
09:45AM 8 party you represent for the record.

09:45AM 9 MR. DIGIACOMO: Good morning. Michael DiGiacomo for
09:45AM 10 the United States.

09:45AM 11 MR. BROWN: Patrick Brown for the defendant, Judge.
09:45AM 12 And for the record, Mr. Lander is present.

09:45AM 13 THE COURT: Are we ready?

09:45AM 14 MR. DIGIACOMO: Yes, Your Honor.

09:45AM 15 MR. BROWN: Judge, I just spoke to Mr. Lander and
09:45AM 16 he's raised an issue within the last day or two on the docket.
09:45AM 17 There's a pro se motion that he filed and I don't know if the
09:45AM 18 Court has seen that or not.

09:45AM 19 And he raises this issue, Judge, if you recall, the
09:45AM 20 government originally made a motion to not have Mr. Lander
09:45AM 21 receive the benefit of the third level for acceptance of
09:45AM 22 responsibility and then, yesterday filed a motion rescinding
09:45AM 23 that earlier motion and recommending that he does receive the
09:46AM 24 full three levels for acceptance. And we also have the
09:46AM 25 presentence report was revised again yesterday to reflect the

09:46AM 1 three levels for acceptance. Mr. Lander, Judge, believes that
09:46AM 2 the fact that the government earlier on moved to deny him the
09:46AM 3 one level, notwithstanding the fact that yesterday moved that
09:46AM 4 he get the one level, results in a breach of the plea
09:46AM 5 agreement and he would like me to explore that issue.

09:46AM 6 THE COURT: How much time would you like to have?

09:46AM 7 MR. BROWN: Judge, I think maybe that's something
09:46AM 8 that could be done in short order, a week or two.

09:46AM 9 MR. DIGIACOMO: Judge, we're completely opposed to
09:46AM 10 that. Number one, I'm not aware of this case law. The
09:46AM 11 government can make motions at any point in time. The
09:46AM 12 government elected to withdraw that motion for reasons that we
09:47AM 13 felt that was the appropriate thing to do. We've taken the
09:47AM 14 defendant back to the original negotiated position, which he
09:47AM 15 wanted. And let's move the matter for sentencing. The
09:47AM 16 problem that we have here, Judge, is a history of this
09:47AM 17 defendant wanting to delay this day for years. We're three
09:47AM 18 years into his taking this plea.

09:47AM 19 This Court has given him hearings, new lawyers,
09:47AM 20 everything. He just doesn't want today to happen and today is
09:47AM 21 the day that the Court has scheduled for sentencing. He is in
09:47AM 22 the position he was when he negotiated and entered this plea
09:47AM 23 three plus years ago. I'm unaware of this case law. I think
09:47AM 24 all this is is a further delay tactic on the part of
09:47AM 25 Mr. Lander to be in control, the same control he demonstrated

09:47AM 1 over the victims of this case. Well, I think, Judge, the time
09:47AM 2 is to tell Mr. Lander he's done calling the shots and this
09:48AM 3 matter should move for sentencing today as scheduled so we get
09:48AM 4 some finality.

09:48AM 5 THE COURT: Did you say there's a case on this,
09:48AM 6 Mr. Brown?

09:48AM 7 MR. BROWN: Judge, excuse me. It's -- I'm not aware
09:48AM 8 of it, but Mr. Lander sent me a letter and it just arrived the
09:48AM 9 other day. And the case that he cites, Judge, is *Griffin* and
09:48AM 10 it's a Second Circuit case, apparently 510 F.3d 354 at page
09:48AM 11 360.

12 THE COURT: Wait. 510.

13 MR. BROWN: F.3d.

14 THE COURT: F.3d. What is it?

15 MR. BROWN: 354.

16 THE COURT: 354.

09:48AM 17 MR. BROWN: And in particular, Judge, page 360. And
09:48AM 18 I haven't read the case, Judge. It's apparently the sent --

09:48AM 19 THE COURT: Well, why don't you -- you've got
09:48AM 20 30 minutes. Take a look at it.

09:48AM 21 MR. BROWN: Okay. I'll run down to the library.

09:48AM 22 THE COURT: I'll take a look at it right now.

09:48AM 23 MR. BROWN: Okay. Thank you.

10:13AM 24 THE CLERK: All rise.

10:13AM 25 (Brief recess.)

10:16AM 1 THE CLERK: All rise. You may be seated.

10:54AM 2 THE COURT: Mr. Brown, do you have anything further
10:54AM 3 to say as far as the *Griffin* case is concerned?

10:54AM 4 MR. BROWN: Judge, both Mr. DiGiacomo and I went to
10:54AM 5 the library and did look at *Griffin*. And I guess, Judge, I
10:54AM 6 would only say that I would just rest on the papers that
10:54AM 7 Mr. Lander has filed regarding this.

10:54AM 8 THE COURT: All right. Mr. DiGiacomo?

10:54AM 9 MR. DIGIACOMO: Judge, our position is that *Griffin*
10:54AM 10 has no bearing. The facts are completely different than the
10:54AM 11 facts we have here. The Court should not give it any
10:54AM 12 consideration, nor should they give any consideration to
10:55AM 13 Mr. Lander's paper because Mr. Lander has been represented by
10:55AM 14 Mr. Brown throughout this proceeding. Mr. Brown responded on
10:55AM 15 his behalf to -- when I originally filed that motion, as well
10:55AM 16 as filed objections. There was an appropriate filing by
10:55AM 17 Mr. Brown. The government has since withdrawn that request.

10:55AM 18 Therefore, Mr. Lander's papers -- he's not pro se.
10:55AM 19 His papers shouldn't even be considered by this Court, but
10:55AM 20 with all that being said, Judge, we take the position *Griffin*
10:55AM 21 does not apply and therefore, this Court should proceed with
10:55AM 22 sentencing today of the defendant.

10:55AM 23 THE COURT: All right. Come on back here at 11:15.
10:55AM 24 I'm carefully considering the *Griffin* case. I wanted to hear
10:55AM 25 counsel first and at 11:15 we'll have the sentencing.

10:55AM 1 MR. DIGIACOMO: Okay, thanks.

10:55AM 2 THE COURT: Or I'll decide that issue. Court will be

10:55AM 3 in recess.

10:55AM 4 THE CLERK: All rise.

10:56AM 5 (Brief recess.)

11:15AM 6 THE COURT: All right. We ready?

11:15AM 7 MR. DIGIACOMO: Yes, Your Honor.

11:15AM 8 MR. BROWN: Yes, Judge.

11:15AM 9 THE COURT: Okay. The defendant, Ryan C. Lander, is

11:15AM 10 before the Court for sentencing on his previous plea of guilty

11:15AM 11 to one count of production of child pornography, in violation

11:15AM 12 of Title 18, United States Code, Section 2251(a) and 2251(e).

11:15AM 13 I know, Mr. Brown, you reviewed the report with all

11:15AM 14 the additions and I assume you reviewed it with your client?

11:15AM 15 MR. BROWN: Yes, Judge.

11:15AM 16 THE COURT: The Court hereby accepts the terms and

11:16AM 17 conditions of the plea agreement and the plea of guilty. I

11:16AM 18 will now place the report in the record under seal. If an

11:16AM 19 appeal is filed, counsel on appeal will be permitted access to

11:16AM 20 the sealed report, except that counsel on appeal will not be

11:16AM 21 permitted access to the recommendation section.

11:16AM 22 The parties have filed the appropriate statement of

11:16AM 23 parties with respect to sentencing factors. There's no

11:16AM 24 dispute about the facts in the report and therefore, the Court

11:16AM 25 adopts these facts as its finding of fact and hereby

11:16AM 1 incorporates them in the record.

11:16AM 2 As for the applicable guidelines, the parties each
11:16AM 3 raised objections to the recommendation with respect to the
11:16AM 4 acceptance of responsibility downward adjustment. The parties
11:16AM 5 have reached a last-minute agreement, however, with respect to
11:16AM 6 that recommendation, pursuant to 1B1.2(a).

11:16AM 7 The parties agreed in the plea agreement that the
11:16AM 8 defendant's sentencing range for imprisonment and a fine shall
11:16AM 9 be determined as if he was convicted of two counts of
11:16AM 10 production of child pornography, in violation of Title 18,
11:17AM 11 United States Code, 2251A, for the production of child
11:17AM 12 pornography count as to victim number 1.

11:17AM 13 The report also recommends that the defendant's base
11:17AM 14 offense level, under Guideline Section 2G2.1(a), is 32. The
11:17AM 15 report also recommends a four-level upward adjustment,
11:17AM 16 pursuant to Guideline Section 2G2.1(b)(1)(A), as the instant
11:17AM 17 offense involved a minor under the age of 12. The report also
11:17AM 18 recommends a two-level upward adjustment, pursuant to
11:17AM 19 Guideline Section 2G2.1(b)(2)(A), as the instant offense
11:17AM 20 involved sexual contact. The adjusted offense level subtotal
11:17AM 21 total is 38.

11:17AM 22 For the production of child pornography count as to
11:17AM 23 victim 2, the report recommends that the defendant's base
11:17AM 24 offense level, under Guideline Section 2G2.1(a), is 32. The
11:18AM 25 report also recommends a four-level upward adjustment,

1 pursuant to Guideline Section 2G2.1(b)(1)(A), as the instant
2 offense involved a minor under the age of 12. The report also
3 recommends a two-level upward adjustment, pursuant to
4 2G2.1(b)(2)(A), as the instant offense involved sexual
5 contact. The adjusted offense level, the subtotal is 38.
6 After these calculations, the multiple count adjustment is
7 applied, pursuant to Guideline Section 3D1.4 and the combined
8 adjusted offense level is calculated at 40.

9 The report initially recommended a two-level downward
10 adjustment based upon the defendant's acceptance of
11 responsibility. As noted previously, both parties initially
12 objected to this recommendation, although the United States
13 later adopted it and the probation officer later amended the
14 recommendation to add a third level, based upon the
15 government's motion, pursuant to 3E1.1(b).

16 The United States originally contended the defendant
17 had not accepted responsibility for his offense conduct and
18 should get no downward adjustment. The United States stressed
19 the burden caused by the defendant's motion to withdraw his
20 guilty plea and the motion to reconsider the Court's initial
21 denial of his motion to withdraw his guilty plea.

22 The defendant, for his part, contended, through his
23 counsel, that he has fully accepted responsibility and is
24 entitled to the complete three-level downward adjustment for
25 the acceptance of responsibility under Guideline

11:19AM 1 Section 3E1.1.

11:19AM 2 Certainly, the defendant should not be denied the
11:19AM 3 acceptance of responsibility downward adjustment solely for
11:19AM 4 having sought to withdraw a guilty plea, provided the
11:19AM 5 defendant does not falsely claim innocence. On the other
11:20AM 6 hand, neither is a defendant automatically entitled to a
11:20AM 7 downward adjustment as a matter of right because of a grudging
11:20AM 8 admission of guilt. See Guideline Section 3E1.1, comment
11:20AM 9 note 3.

11:20AM 10 The defendant's statement to the U.S. Probation
11:20AM 11 Office, as recounted in the presentence investigation report
11:20AM 12 at paragraphs 23, 24, 25 and 26, and very generally admits to
11:20AM 13 sexual contact that he had with his victims in order to make
11:20AM 14 child pornography.

11:20AM 15 But the Court has seen a pattern of behavior on the
11:20AM 16 part of the defendant that shows the defendant tends to
11:20AM 17 deflect personal responsibility and finds it difficult to take
11:20AM 18 responsibility for his own conduct. Unfortunately, that
11:20AM 19 pattern has been evident during this case. For example,
11:21AM 20 during the proceedings -- Mr. DiGiacomo, have a seat.

11:21AM 21 MR. DIGIACOMO: Thank you, Your Honor.

11:21AM 22 THE COURT: During these proceedings, the defendant's
11:21AM 23 motion to withdraw his plea, the defendant sought to blame the
11:21AM 24 investigative agents who talked their way into his home and
11:21AM 25 who talked him into allowing them to seize evidence of his

1 crimes for allegedly violating his Fourth Amendment rights.

2 It became apparent to the Court that the defendant concluded

3 that he made a tactical mistake in responding to the agents as

4 he did and then he seemed to have concluded that if he had

5 only refused the agents permission to enter his home, he might

6 have avoided some of the legal consequences of his criminal

7 conduct.

8 This is partly why the defendant sought to blame his

9 prior counsel for failing to obtain a court order suppressing

10 his incriminating denial to investigating agency that he had

11 actual physical sexual contact with his victims. And it's

12 partly why he sought to blame his prior counsel for failing to

13 obtain a court order suppressing the physical evidence and

14 pornographic images that were seized from his home by the

15 agents.

16 The defendant even tried to claim his prior counsel

17 tricked him into giving up on his motion seeking to suppress

18 this evidence when he pleaded guilty. The defendant claimed

19 to be uninformed of the substance of the motions, but it

20 became clear during the hearing on his motion for

21 reconsideration that the defendant's testimony in that regard

22 was false.

23 The defendant further blamed prior counsel and his

24 own father for coercing him into pleading guilty. As the

25 Court has found, the defendant was not coerced. The defendant

1 has demonstrated his capacity for firm resolve throughout the
2 post-plea proceedings in this case and the Court does not
3 believe that the defendant genuinely believed that he had
4 entered into his plea because of a psychological coercion.

5 Instead, the Court concludes the defendant
6 exaggerated his feelings that he had been presented with no
7 acceptable option on the plea or trial choice that he faced.
8 The defendant exaggerated the differences he experienced with
9 his former counsel in order to bolster his claim that he was
10 coerced by his former counsel and father in pleading guilty.

11 The defendant tried to make it seem like he had
12 experienced actual psychological coercion, so he could seek to
13 withdraw his plea as a way to validate his bitterness over
14 being treated like a criminal and to deflect attention from
15 his deeply disturbed sexual contact with the prepubescent
16 minor victims that he had used to make pornography.

17 The defendant's false, exaggerated testimony in
18 support of his motion for reconsideration of the Court's
19 initial denial of his motion to withdraw his guilty plea is
20 conduct inconsistent with the defendant having accepted
21 responsibility sufficiently to warrant a downward adjustment
22 under Guideline Section 3D1.1.

23 The Court has carefully read the letters submitted on
24 behalf of the defendant. The Court believes the writers'
25 honesty and proclaim they're shocked at what the defendant had

11:24AM 1 done and state honest beliefs the defendant will never commit
11:24AM 2 another crime. The Court hopes that they are correct in their
11:24AM 3 assessment.

11:24AM 4 Nevertheless, the downward adjustment for the
11:24AM 5 acceptance of responsibility should only be awarded by the
11:24AM 6 Court because the defendant has personally taken the first
11:24AM 7 step toward rehabilitation in an open, honest and a sincere
11:24AM 8 acceptance of responsibility for the offense conduct. See
11:24AM 9 *United States v. Parker* at 903 F.3d 91 at page 105 (2d Cir.
11:25AM 10 1990).

11:25AM 11 In this case, the Court finds the defendant has
11:25AM 12 refused to accept how serious the crime is he committed and he
11:25AM 13 testified falsely and made exaggerated claims of coercion
11:25AM 14 while persisting in seeking to withdraw his guilty plea in
11:25AM 15 order to attempt to deflect attention from his deeply
11:25AM 16 disturbed criminal behavior.

11:25AM 17 In a letter to the Court from the defendant dated
11:25AM 18 July 31st, 2019 at Docket Number 171, the defendant recently
11:25AM 19 argued that the United States breached the parties'
11:25AM 20 February 4th, 2015 plea agreement by objecting to a downward
11:25AM 21 adjustment for the acceptance of responsibility that the
11:25AM 22 United States had agreed to in the plea agreement. As a
11:25AM 23 remedy for the alleged breach, the defendant yet again seeks
11:25AM 24 to withdraw his guilty plea. The parties' plea agreement
11:26AM 25 explicitly provides, at paragraph 23, subparagraph D, that the

1 United States may modify its position with respect to a
2 sentencing factor based upon conduct of a defendant after the
3 plea agreement was entered into. That is what transpired
4 here.

5 Moreover, the United States subsequently filed an
6 amended statement with respect to sentencing factors at Docket
7 Number 167, which adopted the presentence investigation report
8 recommendation and has subsequently filed a motion to grant
9 the defendant's third level for acceptance. Under these
10 circumstances, the Court finds the United States did not
11 breach the plea agreement by initially objecting to the
12 recommendation in the presentence report to grant the
13 defendant a two-level downward adjustment for the acceptance
14 of responsibility.

15 At the start of today's proceedings, defendant's
16 counsel brought the case of the *United States v. Griffin* at
17 510 F.3d 354, (2d Cir. 2007) to the Court's attention. The
18 Court had to take an adjournment and has carefully considered
19 the case and has heard oral argument on behalf of both the
20 defendant as well as the government.

21 The prosecutor in the *Griffin* case essentially sought
22 a six-level offense level increase above what was agreed to in
23 the plea agreement at the time the sentence was imposed and
24 did so based upon information that had nothing to do with what
25 had happened after the agreement was entered into.

1 Here, in contrast, the Court has determined, as a
2 matter of fact, that the defendant gave false testimony that
3 he was misled by prior counsel about the substance of his
4 suppression motions. The Court has also determined that the
5 defendant exaggerated his testimony about the circumstances
6 involving his prior counsel that he claimed amounted to
7 coercion, that caused him to give up his right to have his
8 suppression motion addressed and that caused him to enter his
9 guilty plea.

10 The prosecutor's early position in this case on the
11 issues related to whether the defendant has clearly
12 demonstrated acceptance of responsibility are simply
13 irrelevant to these factual findings and the Court's related
14 findings on the related circumstances.

15 Accordingly, even if the Court were to assume there
16 was a breach of the plea agreement, the breach had no effect
17 whatsoever on the Court's determination. Moreover, there is
18 no evidence of bad faith on the part of the United States and
19 the outcome is not unfair to the defendant, given this conduct
20 after the plea agreement that is inconsistent with the
21 acceptance of responsibility.

22 The Court finds that the defendant's July 31st, 2019
23 correspondence to the Court expresses no remorse whatsoever
24 for his having used his sexual contact with prepubescent
25 victims to make child pornography. The defendant does not

1 express any sympathy for his victims and the harm the victims
2 suffered and may well suffer in the future, as a result of his
3 abuse of them.

4 The July 31st, 2019 letter contains no statement
5 tending to show the defendant's acceptance of responsibility
6 for his crime. The letter is, instead, a further example of
7 the defendant's unfortunate emphasis of his personal
8 grievances, instead of on the difficult task that he faces of
9 coming to grips with his responsibility for his criminal
10 conduct.

11 In summary, the defendant has elevated his personal
12 feelings that he does not deserve to be treated like a
13 criminal over and above a sole recognition of the harms he's
14 caused by his conduct and over and above the seriousness of
15 his criminal offense. He is embittered that he is being
16 treated like a criminal. There's no question the defendant
17 suffers from serious sexual dysfunction, but it's also true
18 that he committed a very serious crime.

19 Under the circumstances, the Court is unable to find
20 the defendant's entitled to acceptance of responsibility
21 downward adjustment. The Court would do the defendant no
22 favor by pretending that he has taken his first steps towards
23 rehabilitation by accepting responsibility when that is simply
24 not yet the case.

25 Accordingly, the Court finds the adjusted offense

1 level should be properly calculated at level 40. The criminal
2 history category should be properly calculated as category I.

3 Under this calculation, the advisory guideline range
4 for imprisonment is a term of 292 to 365 months. The
5 statutory term of imprisonment is the mandatory minimum term
6 of 15 years and a maximum of 30 years. The advisory guideline
7 range for supervised release is a term of five years to life.
8 The advisory range for a fine is from 50,000 to \$500,000 plus
9 the cost of imprisonment and supervised release.

10 In accordance with the Supreme Court decision, *U.S.*
11 *v. Booker* and the Second Circuit decision, *U.S. v. Crosby*,
12 this Court must consider the guidelines, is not bound by them.
13 The Court must also consider the factors in 18 U.S.C. 3553(a).

14 Now, I have received 11 letters, including some
15 family photographs, which I have carefully considered. I've
16 also considered the sentencing memorandum filed by the parties
17 in this matter. All right. Mr. Brown, I'll hear from you on
18 behalf of your client.

19 MR. BROWN: Thank you, Judge. Judge, we respectfully
20 object to the Court's denial of the adjustment for acceptance
21 of responsibility, but as we must, we certainly accept it for
22 today's proceedings.

23 Judge, when you look at the presentence report, a
24 picture of Mr. Lander emerges. He's 42 years of age. Other
25 than the instant offense, he has no criminal history, appears

1 to be an intelligent individual, did well in school, was
2 employed. And by all accounts, from the letters that the
3 defense submitted to the Court and what we see in the
4 presentence report, he's a resourceful individual, apparently
5 very mechanically inclined, has musical ability, active in
6 family activities.

7 And it's always difficult, Judge, to get inside
8 someone's head and of course, at this stage of a proceeding,
9 it always sounds like an excuse. And I don't offer excuses,
10 Judge, but rather an explanation. And it sounds like at the
11 time Mr. Lander's parents divorced, that that was very
12 traumatic for him.

13 And in his own words, as reflected in the presentence
14 report, he recognizes that he's a sexually immature person and
15 he's wrestled with this child pornography problem for years.

16 And it's reflected in the presentence report that, on
17 occasion, he became so disgusted with himself for viewing this
18 material that he would smash his computer and withdraw --
19 cancel his internet access, only to find himself later on
20 going back to it.

21 And then he sought counseling that identified him as
22 suffering a generalized anxiety disorder, secondary to sexual
23 issues. But it just -- it would have been good if -- it's
24 been reflected in the presentence report, at paragraph 81, and
25 he's -- so, he's wrestled with it and -- but he just -- it was

1 too much for him. It's also reflected, Judge, in the
2 interview with the presentence report his feelings of disgust
3 with his activity.

4 So, I only point out, Judge, we're mindful of the
5 Court's comments earlier, but Mr. Lander does recognize he --
6 he recognized it when he would cancel his internet
7 subscriptions, he recognized it when he sought counseling and
8 he recognized it at the presentence interview when he
9 acknowledged the wrongfulness of what he was doing and the
10 fact that he was, himself, disgusted by his own activity, that
11 he really does feel remorse.

12 Now, it may well be that he hasn't expressed that in
13 court in the course of the effort to withdraw the guilty plea,
14 but he really does recognize what he did is profoundly wrong.
15 I mean, he gets it, Judge, that this isn't just a minor
16 infraction. He absolutely gets it.

17 And the sentencing range that we now are faced with
18 are 292 to 365 is, for someone who's 42 year of age, likely
19 whatever sentence the Court imposes is going to result in
20 Mr. Lander not being again at liberty. And candidly, Judge,
21 I'm not good enough to do the math, but I'm guessing he's
22 going to be maybe in his 60's or late 50's.

23 So, our request, Judge, would be that he be sentenced
24 certainly no higher than at the low-end of the guideline range
25 as calculated, based on what the Court's just told us. And

1 frankly, we were asking, in our sentencing memorandum, that
2 the Court consider the low end of the guideline range as
3 recommended in the presentence report of 210 months. Judge,
4 these numbers are so high that, we would respectfully submit,
5 there's a certain point beyond which it almost doesn't matter.

6 I mean, if someone is sentenced to 15 years or
7 18 years or 22 years, it's just such a chunk of one's life
8 that I would respectfully submit that sometimes it goes beyond
9 what's necessary. Certainly, the sentence has to be
10 sufficient for the offense conduct and the nature of the
11 defendant, but we would respectfully submit there's no need to
12 get into these numbers that really snuff out any hope on the
13 part of the defendant of rejoining society in the future as a
14 productive member.

15 What Mr. Lander was interested in, Judge -- he's been
16 incarcerated now for an extended period of time. He's had a
17 chance to look into what the Bureau of Prisons offers. And
18 apparently, at the Devens in Massachusetts, they have a
19 program for sexual offenders.

20 And his interest, Judge, is not in simply being
21 warehoused for a period of time and then getting out and
22 resuming this activity. He wants to get rid of it. He wants
23 the time. He recognizes that it's an extraordinary amount of
24 time he's going to spend locked up, but he wants to be as
25 productive as possible with it and his only goal is to not

11:37AM 1 engage in this activity in the future. He just -- he wants to
11:37AM 2 expunge this from his nature.

11:37AM 3 And so, our request, Judge, is that the Court
11:37AM 4 consider a sentence at the low end of the guideline range.
11:37AM 5 And frankly, we would request that the Court give some
11:37AM 6 consideration to the low end of the guideline range as
11:37AM 7 recommended in the presentence report of 210 months, together
11:37AM 8 with a recommendation to the Bureau of Prisons that he serve
11:38AM 9 his sentence at the Devens Facility.

11:38AM 10 THE COURT: All right. Sir, this is your opportunity
11:38AM 11 to say anything you'd like to say.

11:38AM 12 THE DEFENDANT: I would just like to apologize to the
11:38AM 13 victims and the families, as well as my family. I
11:38AM 14 disappointed everybody. And what I have done is a heinous
11:38AM 15 crime and there is no excuse. As Mr. Brown spoke, I do wish
11:38AM 16 to expunge this from my being by going through whatever
11:38AM 17 programs are available. I did seek counseling before I was
11:38AM 18 arrested.

11:38AM 19 And as Mr. Brown spoke, I do feel remorse for the
11:38AM 20 victims. It was a terrible thing I did and I had no excuse
11:38AM 21 for it, but I certainly do not want to re-offend and I wish to
11:38AM 22 do whatever's possible to alleviate that, so that that doesn't
11:39AM 23 occur again. Thank you.

11:39AM 24 THE COURT: Mr. DiGiacomo.

11:39AM 25 MR. DIGIACOMO: Yes, Your Honor. Your Honor, as the

11:39AM 1 Court's pointed out, they have a strong history of this case
11:39AM 2 and knowledge of the defendant and Judge --

11:39AM 3 THE COURT: How long has this case been pending?

11:39AM 4 MR. DIGIACOMO: Well, Judge, he was charged in 2013,
11:39AM 5 pled in '15 and now we're here in 2019.

11:39AM 6 THE COURT: Over six years.

11:39AM 7 MR. DIGIACOMO: Yes. Yes, Your Honor. This case has
11:39AM 8 been around for a long period of time. And Judge, I know the
11:39AM 9 Court has alluded to they have read the government's papers
11:39AM 10 and -- with respect. And Judge, realistically, I'm not
11:39AM 11 going to argue what's already in my papers that the Court's
11:39AM 12 already aware of, but, Judge, I think it needs to be called to
11:39AM 13 the Court's attention that Mr. Lander has a significant
11:39AM 14 attraction towards children and it's outlined in the
11:39AM 15 presentence investigation through his own admissions.

11:39AM 16 And as I noted in my papers, Judge, the aspect of
11:40AM 17 this crime is significant because it is a serious crime
11:40AM 18 because it involved children and having children touch
11:40AM 19 Mr. Lander inappropriately and put items on him that were
11:40AM 20 inappropriate. And Judge, these are serious crimes, as the
11:40AM 21 Court's noted.

11:40AM 22 And Mr. Brown told the Court that the numbers are
11:40AM 23 high, that it's a chunk of one's time. I don't disagree with
11:40AM 24 that, Judge, but when these e numbers -- these guidelines were
11:40AM 25 calculated, it was based on the fact that they looked at the

1 nature and circumstance of the crime. As the Court pointed
2 out, Judge, these victims -- one will ever know how long they
3 will be impacted by this. It may be the rest of their lives.
4 We hope not, but there's always that possibility. So,
5 although Mr. Lander is facing a chunk of time, a significant
6 period of incarceration, in essence, the victims in these
7 cases often suffer a life sentence of which they don't have
8 any out at the end of the day.

9 And Judge, as Mr. Lander -- you know, he took
10 advantage, as I've noted in my papers. He took advantage of
11 people who were at the house of either his mother or other
12 family members and he abused that position of trust and he
13 took that trust and he took it to a level that, in fact, it's
14 well beyond abuse what he did. I mean, he violated these
15 victims when they thought they were potentially secure in
16 one's home.

17 So, Judge, when someone says that in the presentence
18 report, that he -- he's had physical contact with his wife but
19 he got more pleasure out of masturbating to images of children
20 or to their underwear is someone who clearly is a danger to
21 society.

22 Mr. Lander has progressed from looking at it to -- he
23 ultimately went to the final stage, which is touching. And
24 with that, Judge, the government -- as the Court's aware, the
25 government has advocated for a sentence in their sentencing

11:42AM 1 statement -- because the plea allowed the parties to allow to
11:42AM 2 ask for a non-guideline sentence. Judge, I'm asking the
11:42AM 3 Court -- we think a sentence in the range of the low end of
11:42AM 4 the guidelines would be sufficient in this case and we're
11:42AM 5 asking the Court to impose that.

11:42AM 6 THE COURT: What is the low end that you're talking
11:42AM 7 about?

11:42AM 8 MR. DIGIACOMO: Judge, the low end, based on the
11:42AM 9 Court's calculation, would be the 292 to 364. If the Court is
11:42AM 10 looking at -- the government would be looking at the 292
11:42AM 11 range. And the reason is, Judge, is the plea agreement
11:42AM 12 allowed the parties to ask for a non-guideline sentence that
11:42AM 13 would allow the Court to go up into the guidelines as now
11:42AM 14 calculated by the Court.

11:42AM 15 THE COURT: All right. We're going to take a five-
11:42AM 16 minute recess. I'm missing something from my file here. It
11:42AM 17 must be on my desk. I'll be right back.

11:42AM 18 THE CLERK: All rise.

11:53AM 19 (Brief recess.)

11:53AM 20 THE CLERK: All rise. You may be seated.

11:54AM 21 THE COURT: Okay. Mr. DiGiacomo, have a seat.

11:54AM 22 MR. DIGIACOMO: Thank you, Your Honor.

11:54AM 23 THE COURT: This Court is now ready to impose
11:54AM 24 sentence. Pursuant to the Sentencing Reform Act of 1984, it
11:54AM 25 is the judgment of the Court that the defendant, Ryan C.

1 Lander, is hereby committed to the custody of the Bureau of
2 Prisons to be imprisoned for a period of 262 months. The cost
3 of incarceration fee is waived. He shall forfeit his interest
4 in the property specifically set forth in section 7 of the
5 plea agreement and incorporated herein.

6 Upon release, he shall be placed on supervised
7 release for a period of 10 years. He shall report in person
8 to the Probation Office in the district in which he is
9 released within 72 hours. He shall comply with the standard
10 conditions of supervised release adopted by the Court. He
11 shall not commit another federal, state or local crime. He
12 shall be prohibited from possessing a firearm or other
13 dangerous device and he shall not possess a controlled
14 substance.

15 The instant offense occurred after September 1994.
16 However, since it's not related to illegal substances and he
17 does not have a history of substance abuse problems, the
18 mandatory requirements for drug testing is waived.

19 He shall, however, cooperate in the collection of a
20 DNA sample as required by the Justice For All act of 2004. He
21 shall not use or possess any computer, data storage device or
22 any internet-capable device unless the defendant participates
23 in the computer and internet monitoring program or unless
24 authorized by the Court or the U.S. Probation Office.

25 He must provide the U.S. Probation Office with

1 advanced notification of any computer or computers, automatic
2 service or services, or connected device or devices that will
3 be used during the term of supervision. The U.S. Probation
4 Office is authorized to install any application as necessary
5 to surveil all activities on the computer or computer-
6 connected device or devices owned or operated by the
7 defendant. He shall be required to pay the cost of monitoring
8 services.

9 The U.S. Probation Office shall be notified via
10 electronic transmissions of impermissible or suspicious
11 activity or communications during such computer or connected
12 device consistent with the computer monitoring policy in
13 effect by the Probation Office as triggered by the
14 impermissible or suspicious activity. He shall consent to and
15 cooperate with unannounced examinations of any computer
16 equipment owned or used by the defendant.

17 The examination shall include, but is not limited to,
18 retrieval and the copying of all data of computer or
19 computers, connected device or devices, storage media and any
20 internal or external paraphernalia and may involve removal of
21 such equipment for the purpose of conducting a more thorough
22 inspection. Any such monitoring or examination shall be
23 designed to avoid as much as possible reading any privileged
24 information or any private material that is not illegal or
25 reasonably likely to lead to illegal material or evidence

11:58AM 1 related to illegal activity.

11:58AM 2 He must participate in sexual offense-specific

11:58AM 3 treatment program and follow the rules and regulations of that

11:58AM 4 program. The Probation Office shall supervise the details of

11:58AM 5 the defendant's participation in the program, including the

11:58AM 6 selection of a provider and schedule. The defendant is not to

11:58AM 7 leave treatment until complete or is ordered by the Court. He

11:58AM 8 is required to contribute to the cost of services.

11:58AM 9 He shall not have any deliberate contact with any

11:58AM 10 child under 18 years of age, excluding any biological or

11:58AM 11 adopted children, unless it is approved by the probation

11:58AM 12 officer or by the Court. He shall not loiter within 100 feet

11:58AM 13 of schoolyards, playgrounds, arcades or other primary places

11:58AM 14 used by children under the age of 18. The Probation Office

11:58AM 15 has discretion to authorize the defendant to pick up any of

11:58AM 16 his children, if he has children, from any school or other

11:58AM 17 functions. However, authorization must be obtained in advance

11:59AM 18 from the Probation Office or, alternatively, from the Court.

11:59AM 19 In order to monitor the defendant's compliance with

11:59AM 20 not buying or subscribing to online services that provide

11:59AM 21 child pornography, he shall provide the U.S. Probation Office

11:59AM 22 with access to any requested personal and/or business

11:59AM 23 financial information.

11:59AM 24 He shall register with the State Sex Offender

11:59AM 25 Registration Agency in a state where he is resides, is

1 employed, carries on a vocation or is a student and he shall
2 provide proof of registration to the Probation Office. The
3 Probation Office is authorized to release the defendant's
4 presentence report to the New York State Board of Examiners of
5 Sex Offenders. Further disclosure to the county court and to
6 parties involved in a determination of the defendant's final
7 classification level is also authorized.

8 He shall submit to a search of his person, property,
9 vehicle, place of residence or any other property under his
10 control based upon reasonable suspicion and permit the
11 confiscation of any evidence or contraband discovered.

12 He shall submit to a polygraph computer voice stress
13 analyzer or any other such testing not to exceed twice in a
14 calendar year and an additional two retests per year as
15 needed. That testing may include examinations using a
16 polygraph, computerized voice stress analyzer or other similar
17 device to obtain information necessary for the supervision of
18 the defendant and any treatment.

19 He shall answer the questions posed during the
20 examination, subject to the defendant's right to challenge in
21 a court of law the use of such statements as violations of the
22 defendant's Fifth Amendment rights. In this regard, he shall
23 be deemed not to have waived the defendant's Fifth Amendment
24 rights by making any such statements. The results of any
25 polygraph, pretest and polygraph examinations may be disclosed

12:01PM 1 to the U.S. Probation Office and the Court, but shall not be
12:01PM 2 further disclosed without a court order. The defendant's
12:01PM 3 required to contribute to the cost of services rendered.

12:01PM 4 The Court finds the defendant does not have the
12:01PM 5 ability to pay a fine. The Court will not impose a fine.
12:01PM 6 However, I will order the mandatory special assessment of
12:01PM 7 \$100, which is due immediately. Payment shall begin under the
12:01PM 8 Bureau of Prisons Inmate Financial Responsibility Program. I
12:01PM 9 will recommend that he be in -- the name of the facility?

12:01PM 10 MR. BROWN: That was Devens, Your Honor.

12:01PM 11 THE COURT: Devens. Devens Facility in
12:01PM 12 Massachusetts.

12:01PM 13 MR. BROWN: Yes, Judge.

12:01PM 14 THE COURT: That's the recommendation that you made.

12:01PM 15 MR. BROWN: Thank you, Judge.

12:01PM 16 THE COURT: I will make that recommendation.

12:01PM 17 In determining the sentence, the Court has considered
12:01PM 18 the advisory range and the points raised by counsel, as well
12:01PM 19 as the defendant and the government, as to what the
12:01PM 20 appropriate sentence should be. In addition, I've carefully
12:01PM 21 considered the factors in 18 U.S.C. 3553(a) and find the
12:01PM 22 sentence imposed is sufficient but not greater than necessary
12:01PM 23 to comply with the purpose of sentencing in 18 U.S.C.
12:02PM 24 3553(a) (2) .

12:02PM 25 I note that between July 2011 and March 7th, 2013,

1 that he did produce images of child pornography involving a
2 19-month-old and a four-year-old child. These victims were
3 the grandchildren of the mother's boyfriend. The Court
4 carefully considered the seriousness of these activities and
5 facts. The Court further noted that he was attracted to
6 children between the ages of 8 and 12 and falsely denied that
7 he had any sexual contact with these children.

8 I have given a variance here to the sentence and I
9 have that based upon he appears to, today, to have said an
10 indication of remorse. I did factor that in.

11 MR. BROWN: Thank you, Judge.

12 THE COURT: Also, he's been in local custody for
13 over, I believe, six years.

14 MR. BROWN: Yes, Your Honor.

15 THE COURT: Which, obviously, is a facility that
16 doesn't have the treatment and the facilities that a federal
17 penitentiary would have. I received seven letters of support
18 for him which, obviously, are encouraging to the Court that he
19 does have the family support and from his friends and his
20 family.

21 I also noticed that, based on all these factors, I
22 feel that he does show some signs of effort -- some signs, not
23 a lot -- in recognizing the seriousness of the offense and I
24 hope will take strong efforts to rehabilitate himself, so when
25 he does come out of prison that he will deal with this issue

1 and lead a law-abiding life and refrain from these desires
2 that he has with children. I'm not imposing a fine. I don't
3 believe he has the ability to pay a fine.

4 Now, he does have a right to appeal a lot of issues
5 here. He has a right to appeal those issues to the
6 Second Circuit Court of Appeals. I have sentenced at the high
7 end of the original range that was in the plea agreement. I
8 gave that careful consideration and certainly, I looked at
9 that factor and I tried to impose a sentence that was fair and
10 reasonable under all the circumstance and I've done that to
11 the best of my ability. I believe that pretty much covers
12 everything. Mr. DiGiacomo?

13 MR. DIGIACOMO: Yes, Judge. We would move to dismiss
14 Counts 2 and 3 of the indictment.

15 THE COURT: Motion is granted. Court will dismiss
16 Counts 2 and 3.

17 MR. DIGIACOMO: Thank you.

18 THE COURT: Anything further?

19 MR. BROWN: No. Thank you, Judge.

20 THE DEFENDANT: Thank you, Your Honor.

21 THE COURT: Court will be in recess.

22 THE CLERK: All rise.

23 (Proceedings ended.)
24
25

* * * * *

I certify that the foregoing is a
correct transcription of the proceedings
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Court Reporter,